

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:MCT:PHI:POSTF-121431-012  
RHGannon

date: April 18, 2002

to: Internal Revenue Service  
601 Henderson Road  
King of Prussia, PA  
Attention: Walter Kirwan

from: RICHARD H. GANNON  
Special Litigation Assistant

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subject: [REDACTED] Corporation and Subsidiaries  
Effect of Merger on Agency Status under Consolidated Return  
Regulations

This memorandum responds to your undated request for assistance received on April 12, 2002. This memorandum should not be cited as precedent.

QUESTION PRESENTED:

Whether the status of taxpayer as parent of a consolidated group changes when an acquisition subsidiary formed to effect a tender offer for the taxpayer's stock on behalf of buyer merges with the taxpayer and the taxpayer corporation survives the merger.

ANSWER:

The taxpayer retains its status as parent and agent for its own consolidated group for pre-merger periods and remains the proper party to, among other things, execute a Form 872 extending the period of limitations for pre-merger periods with respect to which consolidated returns were filed.

FACTS:

By agreement dated [REDACTED], [REDACTED] Corporation, ("taxpayer") agreed to a friendly tender offer for its common stock by [REDACTED] Corporation, a subsidiary of [REDACTED] Corporation, a domestic corporation and subsidiary of [REDACTED] Inc., its ultimate domestic parent. Under the terms of the agreement, [REDACTED] agreed to pay \$[REDACTED] per share for taxpayer's outstanding common stock when sufficient stock had been

tendered for the offering price, and to merge with taxpayer. [REDACTED] was to disappear as a result of the merger. All pre-existing taxpayer stock was to be cancelled as a result of the merger with [REDACTED] to receive all of taxpayer's newly issued shares in return for its shares of [REDACTED] stock. Taxpayer was to and did survive the merger as a wholly owned subsidiary of [REDACTED]. The merger took place on [REDACTED].

Prior to the merger, taxpayer had served as parent of a consolidated group of corporations and filed consolidated returns on the group's behalf. We understand that returns for prior periods are currently under examination, and that the parties wish to extend the period of limitations for assessment. Your question is whether taxpayer remains the proper party to execute a Form 872 extending the period of limitations for open pre-merger periods. Our answer is that it does.

#### LEGAL DISCUSSION:

I.R.C. § 1501 permits an affiliated group to file a consolidated return with respect to the income tax imposed by the Internal Revenue Code for a particular taxable year. To do so, each member that joins in filing the consolidated return must consent to all the consolidated return regulations. Treas. Reg. § 1.1502-77(a) provides that the common parent of a group filing a consolidated return is the agent for the group for almost all purposes, including the execution of waivers. See Treas. Reg. § 1.1502-77(c).

Treas. Reg. § 1.1502-77T (a)(4)(i) provides that the term of the agency of the common parent for a consolidated return year shall continue as long as the common parent remains in existence, regardless of whether the group itself terminates, one or more members of the group cease to be members, or the common parent ceases to be the common parent. Here, the consolidated group terminated at the time of the merger, Treas. Reg. § 1.1502-75(d) when the common parent, taxpayer, ceased to be the common parent of the group. But, as noted above, the taxpayer remained in existence. Consequently, the taxpayer remains the agent for the group with respect to the consolidated return years ending on or before the merger date.<sup>1</sup>

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<sup>1</sup> Under Treas. Reg. § 1.1502-77T (a)(4)(i), the taxpayer is also the "alternate agent" for the group for the purpose of executing a waiver of the period of limitations under (a)(3) of that section to the extent it was the common parent of the group for the year to which the waiver applies. See also Prop. Reg.

CONCLUSION

The taxpayer remains the proper party to execute forms 872 for pre-merger periods despite the fact that the old consolidated group is no longer in existence.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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APPROVED:

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